

RECESS UNTIL 4:30 P.M.

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until 4:30 p.m.

Thereupon, at 3:18 p.m., the Senate recessed until 4:29 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. AL-LARD).

The PRESIDING OFFICER. In my capacity as a Senator from the State of Colorado, I suggest the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONFIRMATION OF ALGENON L. MARBLEY FOR THE SOUTHERN DISTRICT OF OHIO

Mr. LEAHY. Mr. President, I am delighted that the majority leader has decided to take up this nomination. Mr. Marbley and his family deserve a great deal of praise for this accomplishment.

Algenon Marbley is currently a partner in the law firm of Vorys, Sater, Seymour & Pease in Columbus, OH. He has served as an instructor for the National Institute of Trial Advocacy and is the chairman of the Trial Advocacy Committee of the Columbus Bar Association. He is an active volunteer for several organizations, including the Big Brothers/Big Sisters Association of Columbus.

I sincerely congratulate Mr. Marbley and his family on this accomplishment and look forward to his service as a U.S. district judge for the Southern District of Ohio.

The U.S. Senate, however, does not deserve an enormous amount of credit in this area. This is only the 22d judicial confirmation in a year in which we have seen 115 judicial vacancies. Just think of that, Mr. President, 115 judicial vacancies and the Senate has only seen fit to confirm 22 judicial nominees sent by the President. More than 50 additional nominees remain somehow hidden before the Senate and before the Judiciary Committee with no action.

Six outstanding nominees remain pending on the Senate calendar, ready for Senate approval. Margaret Morrow has been awaiting Senate action since June 12. Christina Snyder has been ready for the Senate to exercise its advise and consent function since September. They are being passed over, again.

The Senate is not even keeping pace with attrition. Since the adjournment of Congress last October, judicial vacancies have actually increased by almost 50 percent and currently number more than 93.

Forty-six judicial nominees remain pending before the Judiciary Commit-

tee. Although the committee has yet to hold a judicial confirmation hearing this month, I am pleased to see that Senator HATCH has noticed a hearing for tomorrow and another for Wednesday afternoon to try to reduce the backlog of nominees awaiting action by the committee. I hope that the committee will move promptly after those hearings to report those nominees to the Senate and that the Senate will proceed to confirm them before adjournment this year.

From the first day of this session of Congress, the Judiciary Committee has never worked through its backlog of nominees and has never had fewer than 20 judicial nominees awaiting hearings. Two hearings in September combined with those planned for this week will not eliminate the backlog, but represent movement in the right direction.

Mr. President, I want Senators to know about another development that, unfortunately, is not intended to help end the partisan stall on judicial confirmations. I have just learned recently that a \$1.4 million fundraising and lobbying effort is underway to try to perpetuate the judicial vacancy crisis and continue the partisan and ideological stall of Senate consideration of much-needed judges. I understand this solicitation for big bucks includes the solicitation of big donors with promises of "intimate dinners" with "leading conservative elected and public figures closely involved with the judicial confirmation process" and that Senators—incumbent Senators—appear on videotape being used as an integral part of this fundraising effort. This is apparently a solicitation for money to help block the Senate from doing its duty to vote on confirmations, in part by promising access for people who send in big money.

Those pressing this effort complain about what they see as "the failure of the U.S. Senate to block" the appointment of judges to the Federal bench. The American people, litigants, prosecutors, and judges, Republicans and Democrats alike, have just the opposite complaint—that the perpetuation of judicial vacancies is affecting the administration of justice and rendering our laws empty promises.

It is sad that this effort is premised on the slanted portrayal of decisions, many of which were decided by judges appointed by President Bush. I have spoken before about the dangers of characterizing isolated decisions to stir up anger against the judiciary just so that somebody can get short-term monetary and political gain. It is not worth the price to try to destroy one of our independent branches of Government and the most independent and effective judiciary in the world.

This fundraising campaign seems to extend back over the course of the year, but it has only become public with reports in the Los Angeles Times and New York Times over the weekend.

Those who delight in taking credit for having killed judicial nominees last

year continue their misguided efforts to the detriment of effective law enforcement and civil justice.

Now, any Senator can vote against any judicial nominee. They have that right. But I urge them to stand up on the floor of the Senate, where the public knows who they are and where they are, and either vote for or against people. It is not only disingenuous, but I think it is detrimental to our system of justice, and it is a true distortion of what we pledge to do in upholding the Constitution when some block judges by anonymous holds. And then we find that the reason for doing that is in connection with a fundraising and lobbying campaign in which letters were sent out by some group saying, in effect, that if you send this money, we will block judges and we will arrange for you to meet privately with leading elected officials.

That is wrong. That is wrong, Mr. President. It is unprecedented in the 23 years that I have been in the Senate. Nothing like this has ever been allowed by any of the leaders of the Senate—not by Senator Mansfield, not by Senator BYRD, not by Senator Baker, not by Senator Dole, and not by Senator Mitchell. It should not be allowed now. It is wrong, and it undermines the very credibility of the U.S. Senate, and it demeans the U.S. Senate; but, even more importantly, it is destructive of the independence of the judiciary.

I yield the floor.

Mr. BREAU addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

UNITED STATES-JAPAN TRADE AGREEMENT

Mr. BREAU. Mr. President, in light of the disturbing news in the stock market this afternoon, I thought it was appropriate to the bring to the attention of my colleagues that there is good news out there. The United States and Japan have concluded a trade agreement opening up the ports of Japan, ending a longstanding dispute between the United States and Japan. This agreement, when it is signed—and it is agreed to—will bring about changes that will benefit ocean-borne trade of both countries, the United States and Japan. The agreements will reform practices in the Japanese ports, to the benefit of importers, exporters, the ports, the workers, and the consumers both in the United States and Japan.

This is good for trade relations between our two countries. The Japanese had for a long period of time prevented our ships from having the same rights to their ports, in terms of bringing our goods to that country, as we have afforded them when they came calling on ports in the United States. Therefore, this is good news for people who are engaged in trade relations and exports and import trade relations with Japan and the United States.

I am very optimistic that this will bring about continued growth in those

markets, and I want to commend the Federal Maritime Commission, its Chairman, Hal Creel, and members of the administration, particularly Stu Eizenstat, for the good work they have done in bringing this to a conclusion.

I yield the floor, and I suggest the regular order.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF ALGENON L. MARBLEY, OF OHIO, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO

The PRESIDING OFFICER. Under the previous order, the hour of 5 p.m. having arrived, the Senate will now go into executive session and proceed to vote on the nomination of Algenon L. Marbley, of Ohio, to be U.S. District Judge for the Southern District of Ohio.

The clerk will report.

The bill clerk read the nomination of Algenon L. Marbley, of Ohio, to be a United States District Judge for the Southern District of Ohio.

Mr. STEVENS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New York [Mr. D'AMATO], the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from Delaware [Mr. ROTH], and the Senator from Virginia [Mr. WARNER] are necessarily absent.

Mr. FORD. I announce that the Senator from Delaware [Mr. BIDEN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Maryland [Ms. MIKULSKI], and the Senator from Oregon [Mr. WYDEN] are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey [Mr. LAUTENBERG] would vote "aye."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 91, nays 0, as follows:

[Rollcall Vote No. 279 Ex.]

YEAS—91

Abraham	Bond	Byrd
Akaka	Boxer	Campbell
Allard	Breaux	Chafee
Ashcroft	Brownback	Cleland
Baucus	Bryan	Coats
Bennett	Bumpers	Cochran
Bingaman	Burns	Collins

Conrad	Holms	Murkowski
Coverdell	Hollings	Murray
Craig	Hutchinson	Nickles
Daschle	Hutchison	Reed
DeWine	Inhofe	Reid
Dodd	Inouye	Robb
Domenici	Jeffords	Roberts
Dorgan	Johnson	Rockefeller
Durbin	Kempthorne	Santorum
Enzi	Kerrey	Sarbanes
Feingold	Kerry	Sessions
Feinstein	Kohl	Shelby
Ford	Kyl	Smith (NH)
Frist	Landrieu	Smith (OR)
Glenn	Leahy	Snowe
Gorton	Levin	Specter
Graham	Lieberman	Stevens
Gramm	Lott	Thomas
Grassley	Lugar	Thompson
Gregg	Mack	Thurmond
Hagel	McCain	Torricelli
Harkin	McConnell	Wellstone
Hatch	Moseley-Braun	
	Moynihan	

NOT VOTING—9

Biden	Kennedy	Roth
D'Amato	Lautenberg	Warner
Faircloth	Mikulski	Wyden

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid upon the table, and the President will be notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

UNANIMOUS-CONSENT AGREEMENT—CONFERENCE REPORT ACCOMPANYING H.R. 2107

Mr. LOTT. Mr. President, I ask unanimous consent that, immediately following the cloture vote, if not invoked on Tuesday morning, the Senate then turn to the Interior appropriations conference report; that the conference report be considered as having been read, and that it be limited to the following time constraints: 60 minutes on the conference report, to be equally divided between Senators GORTON and BYRD; 15 minutes for Senator MURKOWSKI; 10 minutes for Senator ASHCROFT; 10 minutes for Senator MCCAIN; that following the conclusion or yielding back of time, the Senate proceed to vote on the adoption of the conference report without any further action or debate.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. LOTT. Let me confirm again, we have cleared this with the Democratic side of the aisle. This vote will be tomorrow, not tonight, and it will be after the cloture vote on the highway infrastructure bill. I have set out the times of debate before that vote.

EXECUTIVE SESSION

NOMINATIONS OF WYCHE FOWLER, JR., OF GEORGIA, TO BE AMBASSADOR TO THE KINGDOM OF SAUDIA ARABIA, AND THOMAS S. FOLEY, OF WASHINGTON, TO BE AMBASSADOR TO JAPAN

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now proceed to executive session to consider Executive Calendar No. 318, Wyche Fowler, and Executive Calendar No. 320, Thomas Foley. I further ask unanimous consent that there be 10 minutes for debate, equally divided in the usual form on these nominations; and that, finally, at 6:15 p.m. tonight, the Senate proceed to a vote on Calendar No. 318, to be followed by a vote on Calendar No. 320.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Those will be the final two votes of the night. Senator DASCHLE and I discussed this last week. This will give us time to have some brief statements in behalf of these two nominees to be ambassadors. I feel it is very important these actions be taken.

I also note that tomorrow, or not later than Wednesday, if we have not cleared them, we will also have votes on the five FCC nominations. We had discussed the need to do that, and we believe we will be able to move them tomorrow. If necessary, we will call for a recorded vote on those nominees also.

Mr. President, I yield the floor. If no Senator seeks recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The clerk will report the nominations.

The assistant legislative clerk read the nominations of Wyche Fowler, Jr., of Georgia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Saudi Arabia, and Thomas S. Foley, of Washington, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Japan.

NOMINATION OF THOMAS S. FOLEY

Mrs. MURRAY. Mr. President, it is a personal pleasure and an honor for me to be here this afternoon as one of Washington's U.S. Senators. My State—my entire State—is immensely proud today as Tom Foley's nomination to be our Ambassador to Japan comes to the Senate floor.

Most of my Senate colleagues know Tom Foley personally as a result of working with him on legislation and on maintaining the integrity and authority of the legislative branch.